

REMARKS

Upon entry of the above amendment, claims 28, 32, 34-36, 38 and 42-45 will be pending, claims 1-27, 29-31, 33, 37, and 39-41 having been cancelled. Claims 28 and 35 have been amended to specify that the peptide transporter is “PepT1 or PepT2”. This limitation can be found the now-cancelled claims 30-31 and 40- 41, respectively; further support is found claims 9 and 12 as originally filed and in the specification at paragraph [0034] of the published application (U.S. Patent Application Publication No: US 2006/0210569 A1). No new matter has been added. Entry of the above amendment and allowance of all pending claims in view of the remarks in this Response are respectfully requested.

Claim objections

The Examiner indicated on page 2 of the Office Action Summary that claims 30, 31, 40 and 41 were objected to, although the Examiner does not appear to have provided reasons in the body of the Office Action for his objections. Claims 30, 31, 40 and 41 have been cancelled, so the any objections as applied to these claims are now moot.

35 U.S.C. § 103(a)

The Examiner maintained the rejection of claims 16, 18-27 and newly rejected the rejoined claim, claim 17, as obvious over Liang *et al.* (*J. Biol. Chem.* 1995; 270:6456-6463) and Liu *et al.* (*Biochem. Biophys. Acta* 1995; 1235:461-466) in view of Campbell (*Monoclonal Antibody Technology*; 1984; Elsevier Science Publishing Company Inc.: page 1-33), Winter *et al.* (*Nature* 1991; 349:293-299), Basu *et al.*, 1996 or Basu *et al.*, 1998 (previously cited). Applicants respectfully disagree. Without conceding that the claims as presented are obvious and solely for the purposes of furthering prosecution, claims 16-27 have been cancelled, so the rejection is now moot. Applicants reserve the right to prosecute claims of a different scope in a continuing application.

Claim rejections under 35 U.S.C. § 112, first paragraph: lack of written description

The Examiner rejected claims 16, 17, 20-29, 32, 34-36, 38-39 and 42-45 for allegedly failing to comply with the written description requirement. The Examiner has asserted that “Therefore, the recited phrase of “peptide transporter” encompasses more than what is described in the specification” (Office Action at page 6) and that “In this case, the specification has only set forth two species within the large and broad class of peptide transporters claimed (Office Action at page 6).

Without conceding that the claims as presented lack written description and solely for the purposes of furthering prosecution, claims 16-27 have been cancelled, so the rejection as applied to these claims is now moot. Applicants have amended independent claims 28 and 35 to recite an isolated antibody or antigen-binding fragment that binds to a PepT1 or PepT2 peptide transporter. As the Examiner has acknowledged, the specification has “set forth antibodies that bind to PepT1 and PepT2” (Office Action at page 6). Accordingly, the claims now require a particular peptide transporter, PepT1 or PepT2, and one of ordinary skill in the art would readily accept that Applicant was in possession of the methods now claimed. In view of the both the descriptions in the specification and the present amendment, Applicants request reconsideration and withdrawal of the rejection under 35 U.S.C. §112.

Obviousness-type Double Patenting

The Examiner maintained the provisional rejection for obviousness-type double patenting over the claims 15-39 of co-pending application 10/497,900, applying the rejection to claims 16-18 and 20-22 of the present application. Claims 16-27 have been cancelled, so the rejection is now moot.